IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL **APPELLATE SIDE**

CRIMINAL APPEAL NO.605 OF 2001

Yusufkhan Ibrah**imkhan** .. Appellant.

Versus

The State of Ma**harashtra** .. Respondents.
(Yerawada Police Station)

Smt.Prabha Mane and Shri Rajesh Jagatani for the Appellant.

Smt.Shitole, APP for the State.

CORAM: D.G.DESHPANDE &
V.M.KANADE,JJ.
DATE : 18/11/2005.

P.C.

1. The accused is convicted by the Additional Sessions Judge, Pune under Section 302 of the Indian Penal Code for committing murder of his wife.

2. Learned counsel Smt.Mane for the appellant, however, without going into merits of the case made only one submission. According to her, the accused had engaged an advocate Mr.S.B.Sayyed earlier. On 19/4/2001 two witnesses were present. Advocate for the accused applied for adjournment. That application was rejected by the Court . Then witnesses namely PW 1 and PW 2 were examined. One of the witnesses namely PW 1 who was the

daughter of the accused and also an eye witness was cross examined. Obviously the accused could not cross examine the witness. Then on the same day accused filed an application for sending his case to the Fast Track Court. That application was rejected. Thereafter the accused engaged another advocate and on 24/04/2001 filed an application for recalling these witnesses for examining them. Ex.30 is that application. The Sessions Judge did not pass any order for a long time and ultimately on 28th June 2001 Ex. 30 came to be rejected and on 2nd July 2001 the impugned Judgement was delivered convicting the accused.

3. Mrs.Mane, therefore, contended even if the Court was not justified in rejecting the application for recalling witnesses and secondly even if the application was rejected, the Court should have considered the substantive right of accused to cross examine the witnesses , particularly PW 1 should have been recalled for cross examination. Rejection of Ex. 30 has resulted in serious miscarriage of justice. Offence is under section 302 and not a petty offence and therefore, cross examining the witnesses was necessary.

4. We find substance in the submission of the learned

counsel for the appellant. The Roznama does not show that advocate of the accused, who was engaged, was in the habit of seeking adjournment on flimsy grounds. The application for adjournment on 19/4/2001 appears to be the first application when the witensses were present and even if the Court had rejected the same, the Court should have allowed the accused to cross examine the witnesses by allowing application Ex.30. Rejection has resulted in serious miscarriage of justice. The matter has to be remanded to trial court. Learned A.P.P. for the State. could not support these two orders of the court namely rejecting the application. Therefore, following order.

5. Judgment of conviction and sentence is set aside. The matter is remanded to the trial court who will grant permission and liberty to the accused to cross examine PW 1 and PW 2. Thereafter statement of the accused under Section 313 may be recorded by the Court if found necessary and after hearing the advocate for accused, the Court should pass the Judgement according to law within two months from the date of appearance. Accused be taken to the court for appearance on 5th December 2005.

6. Appeal stands disposed of.

(D.G.DESHPANDE,J)

(V.M.KANADE,J)